

# PROFESSIONAL ENGINEERS SECTION MEETING

## MINUTES

The Professional Engineers Section of the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA Board) met on November 16, 2011, at the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia, with the following members present:

John L. Combs  
Nico De León  
Wiley V. Johnson, III

Staff present for all or part of the meeting were:

Gordon N. Dixon, Director  
Mark N. Courtney, Deputy Director of Licensing and Regulation  
Kathleen (Kate) R. Nosbisch, Executive Director  
Marian Brooks, Board Administrator  
Justin Garofalo, Board Administrator  
Amy Goobic, Administrative Assistant  
Earlyne Perkins, Legal Analyst

No representative was present from the Office of the Attorney General.

Mr. Johnson, Chair, called the meeting to order at 9:09 a.m.

### Call to Order

Mr. Johnson reviewed the emergency evacuation procedures.

### Emergency Evacuation Procedures

Mr. Combs moved to approve the agenda. Mr. De León seconded the motion which was unanimously approved by members: Combs, De León, and Johnson.

### Approval of Agenda

Ms. Irina Astrakhan was present to address the Section. Ms. Astrakhan spoke about the TOEFL requirements contained in the board's regulations, the inability to take the TOEFL as a U.S. citizen and the difficulties this creates in obtaining a Virginia license. Mr. Johnson informed Ms. Astrakhan that the section would be discussing the TOEFL requirements later in the meeting.

### Public Comment Period

Regarding **File Number 2011-02386, Ronald Bourgault**, the section members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcripts and exhibits, and Summary of the Informal Fact-Finding Conference. Mr. Combs recommended that the Board accept the Summary of the Informal Fact-Finding Conference which cites the following violations of the Board's regulations: 18VAC10-20-750.B, two violations (Count 1); and 18VAC10-20-750.C, three violations (Count 2). Mr. Johnson seconded the motion which was unanimously approved by members: Combs and Johnson.

### File Number 2011- 02386, Ronald Bourgault

Ms. Perkins informed the section that Mr. Bourgault had no prior violations. Mr. Combs moved to recommend that the Board accept the recommended sanctions as contained in the Summary of the Informal Fact-Finding Conference: no monetary penalty for the violations contained in Count 1; and \$150.00 each for the three violations contained in Count 2, for a total monetary penalty of \$450.00. Mr. Johnson seconded the motion which was unanimously approved by members: Combs and Johnson.

As the presiding board member, Mr. De León was not present for the discussion or vote.

Regarding **File Number 2011-03650, William Dominic Idoni**, the Section members reviewed the Consent Order as seen and agreed to by Mr. Idoni. The Section concurred with the recommendation of the presiding Board member. Mr. Combs moved to recommend the Board accept the Consent Order which cites the following violation of the Board's regulations: 18VAC10-20-730.C (Count 1). For this violation, Mr. Idoni agrees to the following monetary penalties: \$2,500.00 for the violation contained in Count 1; and Board costs in the amount of \$150.00, for a total of \$2,650.00. Mr. Johnson seconded the motion which was unanimously approved by members: Combs and Johnson. As the presiding board member, Mr. De León was not present for the discussion or vote.

**File Number 2011-03650, William Dominic Idoni**

Regarding **File Number 2011-03305 Jerald Sumrell**, the Section members reviewed the Consent Order as seen and agreed to by Mr. Sumrell. The Section concurred with the recommendation of the presiding Board member. Mr. De León moved to recommend the Board accept the Consent Order which cites the following violation of the Board's regulations: 18VAC10-20-750.C (Count 1). For this violation, Mr. Sumrell agrees to the following monetary penalties: \$150.00 for the violation contained in Count 1; and Board costs in the amount of \$150.00, for a total of \$300.00. Mr. Combs seconded the motion which was unanimously approved by members: Combs and De León. As the presiding board member, Mr. Johnson was not present for the discussion or vote.

**File Number 2011-03305, Jerald Sumrell**

Regarding **File Number 2012-00055, Philip E. Badger III**, the Section members reviewed the record of the Informal Fact-Finding Conference, which consisted of the transcript, exhibits and the summary and recommendation of the presiding Board member. Mr. Combs moved to recommend the Board accept the recommendation of the presiding officer and approve Mr. Badger's application for licensure by comity. Mr. De León seconded the motion which was unanimously approved by members: Combs, De León and Johnson. Ms. Kristin Clay, hearing officer, presided at the IFF.

**File Number 2012-00055, Philip E. Badger III**

Ms. Nosbisch provided background on the need for a guidance document

**Discussion of Proposed**

addressing comity licensure requirements. Ms. Nosbisch explained that inconsistencies have occurred in the application review process and that all applications should be treated equally. Discussion was held on the relevance of an applicant's more recent experience.

**Board Guidance  
Document for Comity  
Licensure**

Ms. Nosbisch informed the Section that the document had been reviewed by the Architect and Land Surveyor Sections and that the LS Section recommended adding language to the guidance document stating that "if you are unable to comply, it will be reviewed on a case by case basis." The Section concurred with the recommendation of the LS Section. Ms. Nosbisch stated that the guidance document would help in making consistent decisions and clarify for applicants. The document will be discussed at the full Board meeting December 15, 2011.

Ms. Nosbisch provided background information on the use of protected professional titles by other state agencies and the need for a guidance document to clarify how protected titles should be used. The guidance document was drafted as requested at the Committee meeting September 1, 2011. Ms. Nosbisch further informed the Section that the document had been reviewed by the Architect and Land Surveyor Sections and provided the comments and recommendations by those sections.

**Discussion of Proposed  
Board Guidance  
Document on Use of  
Protected Professional  
Titles**

Ms. Nosbisch informed the Section that Mr. Dixon is drafting a letter to be sent to directors of other Virginia state agencies clarifying the board's regulations, as they pertain to the use of professional titles. Mr. Dixon is in hopes that a letter from one agency head to others will begin an open dialogue between the various agencies and provide clarification.

Ms. Nosbisch reported that the Architect Section recommended the use of the guidance document in addition to the letter from Mr. Dixon. The Land Surveyor Section felt the letter by itself was sufficient. The PE Section agreed by consensus that the guidance document is not necessary; the letter from Mr. Dixon will more actively resolve the issue. The document and draft letter will be discussed at the full Board meeting December 15, 2011.

Ms. Nosbisch provided background on the need for a guidance document addressing applicant's ability to speak and write English to the satisfaction of the Board. The current regulations require a TOEFL score for any applicant whose primary language is not English or that did not graduate from a college or university where English is the language of instruction. The guidance document clarifies that the following individuals will be considered able to speak and write English to the satisfaction of the Board: applicants that have graduated from an English-speaking high school; are currently licensed in another jurisdiction who also possess a current NCEES, NCARB or CLARB record; and applicants that were previously approved by the Board, submitted a TOEFL for the approval, and are reapplying for exam approval. Any applicant meeting one of these three criteria will not be

**Discussion of Proposed  
Board Guidance  
Document for  
Establishing Applicants  
Ability to Speak and  
Write English to the  
Satisfaction of the  
Board**

required to submit a TOEFL score report.

Ms. Nosbisch shared comments from the Architect and Land Surveyor Section meetings regarding the document. Ms. Nosbisch informed the Section that the Land Surveyors requested she consult with board counsel to ensure the guidance document was not contradicting the board's regulations. Ms. Nosbisch was able to speak with Steven Jack, board counsel, and he stated that the guidance document did not contradict the requirements contained in the board's regulations.

Discussion was held on acceptance of US citizenship in lieu of a TOEFL score. Mr. Garofalo stated that the Section had previously voted to accept citizenship in lieu of TOEFL, but the full Board agreed by consensus at its meeting June 17, 2010, to not accept citizenship in lieu of TOEFL.

The Section agreed by consensus to amend the document with the following changes: delete the suggested language "and also possess an NCEES, NCARB, or CLARB record;" change "applicants that were previously approved by the Board, submitted a TOEFL for the approval, and are reapplying for exam approval" to applicants that were previously approved by the Board, submitted a then current TOEFL with score acceptable to the Board for the approval, and are reapplying for exam approval;" and adding a statement exempting naturalized US citizens from the TOEFL requirement.

The document will be discussed at the full Board meeting December 15, 2011.

The section discussed the importance of licensure for any firm practicing engineering in Virginia. The section expressed concern that it would have no recourse in the following scenario:

- *Unlicensed* Firm A performs work in Virginia
- The work is then plan stamped by *licensed* Firm B
- Firm B is not competent in the specific work nor did it have direct control and personal supervision over Firm A's work

The section discussed that Firm A is practicing without a license and Firm B is violating 18VAC10-20-760 of the Board's regulations (signing and sealing.) The section's discussion ultimately concluded that 1.) companies practicing in Virginia must be licensed and 2.) companies signing and sealing work in Virginia must do so in accordance with the requirements of the Board's regulations. Mr. Johnson emphasized the point that, any company signing and sealing work which is resultant from information provided by a consultant, that same company is accepting professional responsibility for all work contained in those plans.

Ms. Nosbisch stated that the topic would be discussed at the full Board

**Discussion on Definition  
of "Consultation" as it  
Relates to the Practice  
of Landscape  
Architecture,  
Architecture and  
Engineering**

meeting December 15, 2011.

The Section recessed from 10:40 a.m. until 10:55 a.m.

#### **Recess**

Mr. Dixon provided an update on the recommendations of the Reform Commission and the impact to the APELSCIDLA Board. Mr. Dixon reported that deregulation of Certified Interior Designers and Landscape Architects was recommended. The Commission is also recommending a five year moratorium on new regulated professions. The Commission is also reviewing an initiative in Colorado which had a 'sunrise' and 'sunset' provision for regulated professions. The 'sunrise' provision would ensure the soundness of a regulated profession, and 'sun setting' would review professions every set number of years for relevance.

#### **Governor's Government Reform Commission Update**

Discussion was held on a proposed guidance document that would clarify the requirements for onsite sewage system designs by a professional engineer or a licensed onsite soil evaluator. Mr. Courtney recommended adding a statement to emphasize that systems include "both treatment and dispersal components." The section agreed to further clarification in the document by adding "so long as the system meets all of the following criteria:"

#### **Discussion of Proposed Guidance Document on Onsite Sewage Systems Designed by PE's and Onsite Soil Evaluators**

1. Utilizes packaged equipment, such as equipment of catalogued standard design that has been coordinated and tested by the manufacturer, and complies with all applicable codes;
2. Produces a flow which is less than 1,000 gallons per day; and
3. The pump (if a pump is included) does not include multiple downhill runs, terminates at a positive elevational change; the discharge end is open and not pressurized; the static head does not exceed 50 feet; and the force main length does not exceed 500 feet.

with regards to systems designed by a licensed onsite soil evaluator and the exemption contained in §54.1-402.A.11.

The Section agreed by consensus to the proposed document with the recommended amendments. The document will be discussed at the full Board meeting December 15, 2011.

Ms. Nosbisch informed the Section that PCS, exam vendor, was very complimentary of JMU as a new testing site for the FE exam. Section members were provided with the results from the NCEES Survey regarding the Washington Accord and jurisdictions that accept as equivalent. Ms. Nosbisch further informed the Section that the last pencil and paper FE and FS exams were on target for October 2013, it will then be computer based; Gene Dinkins, PE/PLS from South Carolina was elected NCEES President-Elect; Dave Widmer, PLS, from Pennsylvania was elected NCEES Treasurer; and former board member, Stanley Harris, PE, would be nominated for the NCEES National Distinguished Service Award.

#### **NCEES Update**

Ms. Nosbisch informed the Section that ABET created a tab on their website for archived programs, which should be beneficial for researching ABET degrees. **Other Business**

Mr. Combs asked Ms. Nosbisch to discuss the new process pending for cases. Ms. Nosbisch reiterated only disciplinary or technical cases will require review at the section level before proceeding to the full Board. All non-technical and licensing cases would go straight to the full Board. There is no provision in the regulations stating section meetings are required. Ms. Nosbisch is in discussion with the Compliance and Investigations Division to determine an effective date to implement this process.

Conflict of Interest forms were completed by all members present.

**Conflict of Interest  
Forms**

There being no further business, the meeting was adjourned at 11:50 a.m.

**Adjourn**

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Wiley V. Johnson III, Chair

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Gordon N. Dixon, Secretary